

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

In Re SMERLING LITIGATION

21 Civ. 2552 (JPC)

**ORDER CONFIRMING THE FINALITY OF
JUDGMENTS AGAINST DEFENDANTS**

WHEREAS the following judgments (the “Judgments”) have been entered in favor of Plaintiffs Silicon Valley Bank (“SVB”) or Citizens Bank, N.A. (“Citizens Bank”) and against Defendants Elliot S. Smerling, JES Global Capital GP III, LLC, JES Global Capital GP II, LLC or JES Global Capital II, L.P. in the two actions consolidated under the above caption (*Silicon Valley Bank v. Smerling et al.*, No. 21-cv-2552 (S.D.N.Y.) and *Citizens Bank N.A. v. Smerling et al.*, No. 21-cv-5766 (S.D.N.Y.)):

- a. SVB’s Final Judgment on Consent as to Elliot Smerling dated June 14, 2021 (Ex. 1; Consolidated Action, ECF No. 83);
- b. SVB’s Default Judgment as to JES Global Capital III, LLC dated January 6, 2022 (Ex. 2; Consolidated Action, ECF No. 150);
- c. Citizens Bank’s Final Judgment dated June 22, 2021 (Ex. 3; Citizens Bank Action, ECF No. 61); and
- d. Citizens Bank’s Default Final Judgment dated June 22, 2021 (Ex. 4; Citizens Bank Action, ECF No. 60).

WHEREAS James S. Feltman of Kroll, LLC, the Receiver appointed by the Court to identify, marshal, and preserve the assets of the Defendants, has identified certain bank accounts

held at a Switzerland-domiciled bank, Union Bancaire Privée, UBP SA (“UBP”), in the names of the Canes Three Trust, Hurricanes Four Trust, and Canes International Holdings Ltd. (the “Bank Accounts”), which appear to hold assets within the scope of the Court-ordered receivership.


WHEREAS SVB and Citizens Bank anticipate filing proceedings in the civil tribunal of the Republic and Canton of Geneva, Switzerland (the “Tribunal”) seeking an order from the Tribunal requiring UBP to turn over the funds in the Bank Accounts to SVB, Citizens Bank, and the Receiver and prohibiting UBP from executing any other transfer orders to or from the Bank Accounts.

WHEREAS to obtain such an order from the Tribunal, SVB and Citizens Bank have been advised that they need a “certificate” from a United States court finding that the Judgments entered against Defendants are final, enforceable, and no longer subject to appeal.

IT IS ACCORDINGLY HEREBY

ORDERED that (a) the Judgments are final and enforceable, (b) more than 30 days have elapsed since each such Judgment was issued and entered by a Court, and (c) no appeal was filed with respect to any Judgment during the 30-day period following entry of each Judgment.

Dated: August 22, 2022
New York, New York


The Honorable John P. Cronan
United States District Judge